

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

No. 13-0967V

**Filed: March 26, 2015
(Not to be published)**

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BENJAMIN FOLLEN,

*

v.

Petitioner,

* Dismissal Decision; Flu; Brachial Plexitis

SECRETARY OF HEALTH
AND HUMAN SERVICES,

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*

Respondent.

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*Howard Scott Gold, Esq., Gold Law Firm, LLC, Wellesley Hills, MA for petitioner.
Claudia Gangi, Esq., U.S. Dep't. of Justice, Washington, DC for respondent.*

DECISION¹

Gowen, Special Master:

On December 9, 2013, petitioner filed a petition for Vaccine Compensation in the National Vaccine Injury Compensation Program [“the Program”],² alleging that he suffered from brachial plexitis as a result of the influenza vaccine. The information in the record, however, does not show entitlement to an award under the Program. On March 26, 2015, petitioner moved for a decision dismissing this petition.

To receive compensation under the Program, petitioner must prove either 1) that he suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table, or 2) that he suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A)

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

and 11(c)(1). An examination of the record did not uncover any evidence that petitioner suffered a “Table Injury.” Further, the record does not contain persuasive evidence indicating that petitioner’s alleged injury was vaccine-caused.

Under the Act, petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 13(a)(1). In this case, because there are insufficient medical records supporting petitioner’s claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion that supports a finding of entitlement.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that he suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

/s/Thomas L. Gowen
Thomas L. Gowen
Special Master